

## FOREIGN MILITARY SALES ACT AMENDMENTS

DECEMBER 31, 1970.—Ordered to be printed

Mr. MORGAN, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 15628]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15628) to amend the Foreign Military Sales Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate numbered 1 and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 2 and agree to the same with an amendment as follows:

Strike out the matter proposed to be stricken out and insert in lieu thereof the following: "*shall not exceed \$340,000,000 for each of the fiscal years 1970 and 1971*".

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 3 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

*SEC. 7. Unless the sale, grant, loan, or transfer of any International Fighter aircraft (1) has been authorized by and made in accordance with the Foreign Military Sales Act or the Foreign Assistance Act of 1961, or (2) is a regular commercial transaction (not financed by the United States) between a party other than the United States and a foreign country, no such aircraft may be sold, granted, loaned, or otherwise transferred to any foreign country (or agency thereof) other than South Vietnam. For purposes of this section, "International Fighter aircraft" means the fighter aircraft developed pursuant to the authority contained in the proviso of the*

second paragraph of section 101 of Public Law 91-121 (relating to military procurement for fiscal year 1970 and other matters).

SEC. 8. (a) Subject to the provisions of subsection (b), the value of any excess defense article granted to a foreign country or international organization under part II of the Foreign Assistance Act of 1961 shall be considered to be an expenditure made from funds appropriated under that Act for military assistance. When an order is placed under the military assistance program with the military departments for a defense article whose stock status is excess at the time ordered, a sum equal to the value thereof shall (1) be reserved and transferred to a suspense account, (2) remain in the suspense account until the excess defense article is either delivered to a foreign country or international organization or the order therefor is cancelled, and (3) be transferred from the suspense account to (A) the general fund of the Treasury upon delivery of such article or (B) to the military assistance appropriation for the current fiscal year upon cancellation of the order. Such sum shall be transferred to the military assistance appropriation for the current fiscal year upon delivery of such article if at the time of delivery the stock status of the article is determined, in accordance with sections 644 (g) and (m) of the Foreign Assistance Act of 1961, to be nonexcess.

(b) The provisions of subsection (a) shall apply during any fiscal year only to the extent that the aggregate value of excess defense articles ordered during that year exceeds \$100,000,000.

(c) For purposes of this section, "value" means not less than 33⅓ per centum of the amount the United States paid at the time the excess defense articles were acquired by the United States.

(d) The President shall promptly and fully inform the Speaker of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate of each decision to furnish on a grant basis to any country excess defense articles which are major weapons systems to the extent such major weapons systems was not included in the presentation material previously submitted to the Congress. Additionally, the President shall also submit a quarterly report to the Congress listing by country the total value of all deliveries of excess defense articles disclosing both the aggregate original acquisition cost and the aggregate value at the time of delivery.

SEC. 19. In considering a request for approval of any transfer of a defense article to another country under section 505 (a) (1) and (a) (4) of the Foreign Assistance Act of 1961, and section 3 (a) (2) of the Foreign Military Sales Act, the President shall not give his consent to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under such sections to the transfer of any significant defense articles on the United States Munitions List unless (1) the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or (2) the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President.

SEC. 10. (a) Notwithstanding any provision of law enacted before the date of enactment of this section, no money appropriated for foreign assistance (including foreign military sales) shall be available for obligation or expenditure—

(1) unless the appropriation thereof has been previously authorized by law; or

(2) in excess of an amount previously prescribed by law.

(b) To the extent that legislation enacted after the making of an appropriation for foreign assistance (including foreign military sales) authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) shall have no effect.

(c) The provisions of this section shall not be superseded except by a provision of law enacted after the date of enactment of this section which specifically repeals or modifies the provisions of this section.

SEC. 11. For purposes of sections 8 and 9—

(1) "defense article" and "excess defense articles" have the same meanings as given them in section 644(d) and (g), respectively, of the Foreign Assistance Act of 1961; and

(2) "foreign country" includes any department, agency, or independent establishment of the foreign country.

SEC. 12. The joint resolution entitled "Joint resolution to promote the maintenance of international peace and security in Southeast Asia", approved August 10, 1964 (78 Stat. 384; Public Law 88-408), is terminated effective upon the day that the second session of the Ninety-first Congress is last adjourned.

SEC. 13. No funds authorized or appropriated pursuant to this or any other law may be used to transport chemical munitions from the Island of Okinawa to the United States. Such funds as are necessary for the detoxification or destruction of the above described chemical munitions are hereby authorized and shall be used for the detoxification or destruction of chemical munitions only outside the United States. For purposes of this section, the term "United States" means the several States and the District of Columbia.

And the Senate agree to the same.

Amendment to the title:

That the House recede from its disagreement to the amendment of the Senate to the title of the House bill and agree to the same.

THOMAS E. MORGAN,  
CLEMENT J. ZABLOCKI,  
WILLIAM S. MAILLIARD,

*Managers on the Part of the House.*

JOHN SPARKMAN,  
MIKE MANSFIELD,  
FRANK CHURCH,  
GEORGE D. AIKEN,  
CLIFFORD P. CASE,  
JOHN SHERMAN COOPER,

*Managers on the Part of the Senate.*

## STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 15628) to amend the Foreign Military Sales Act, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Except for technical, clerical, and conforming changes made necessary by reason of the agreement reached by the conferees, the differences between the House bill and the conference agreement are noted below.

### AUTHORIZATION OF FUNDS

#### (Section 2)

The House authorized the appropriation of \$275 million for fiscal year 1970 and \$272,500,000 for each of fiscal years 1971 and 1972.

The Senate authorized the appropriation of \$250 million for each of fiscal years 1970 and 1971. The Senate amendments did not contain an authorization for fiscal year 1972.

The House established an aggregate ceiling of \$350 million during fiscal year 1970 and \$385 million for each of fiscal years 1971 and 1972.

The Senate established an aggregate ceiling of \$300 million for each of fiscal years 1970 and 1971. The Senate amendments did not establish an aggregate ceiling during fiscal year 1972.

The managers on the part of the House agreed to an authorization for each of fiscal years 1970 and 1971 of \$250 million and an aggregate ceiling of \$340 million for each of the fiscal years 1970 and 1971.

### PROHIBITION ON THE SALE, GRANT, LOAN OR TRANSFER OF ANY INTERNATIONAL FIGHTER AIRCRAFT TO ANY FOREIGN COUNTRY OTHER THAN SOUTH VIETNAM

#### (Section 8 of the Senate amendment)

The Senate added an amendment which would prohibit the sale, grant, loan or transfer of any International Fighter to any country other than South Vietnam, unless it has been authorized by and made in accordance with the Foreign Military Sales Act or the Foreign Assistance Act of 1961, as amended, or is a regular commercial transaction not financed by the United States.

The House bill contained no comparable provision.

The House conferees receded and accepted the Senate amendment. There is sufficient authority available under both the Foreign Military Sales Act and the Foreign Assistance Act of 1961, as amended, to make this aircraft available to friendly countries and international organizations.

## RESTRICTION ON GRANTS TO FOREIGN COUNTRIES OF EXCESS DEFENSE ARTICLES

(Section 9 of the Senate amendment)

This Senate amendment provided that the total value of excess defense articles that may be furnished in any fiscal year shall not exceed \$35 million. Any amount given above that ceiling would be subtracted from funds available for grant military assistance and deposited in the Treasury of the United States as miscellaneous receipts. For valuation purposes, the amendment provides that excess defense articles be valued at not less than 50 percent of acquisition costs.

The House bill did not contain a comparable provision.

The managers on the part of the House agreed to a ceiling of \$100,000,000. The value of such excess defense articles shall be not less than one-third of the price paid for the item by the United States.

The managers on the part of the House agreed that the Congress shall have control over the amount of excess defense articles made available to friendly countries and international organizations each year.

The ceiling agreed to is high enough to permit the distribution of such excess articles to continue during the rest of the fiscal year.

## MILITARY EQUIPMENT TRANSFER

(Section 11 of the Senate amendment)

The Senate amendment added a new section 11 to the bill which provided: in subsection (a) that the President shall not consent under the Foreign Assistance Act or the Foreign Military Sales Act to the transfer of a defense article by the original recipient country to another country unless the United States would itself furnish that defense article directly to the second country; and in subsection (b) that the original recipient (foreign country or private person) of a defense article from the United States must agree not to dispose of the defense article to a second recipient without obtaining the agreement of the second recipient that it, in turn, will not dispose of the defense article to a third recipient without the consent of the President and without obtaining the consent of the third recipient that it, in turn, will not dispose of the defense article to a fourth recipient without the consent of the President.

The House bill did not contain any comparable provisions.

The House receded with an amendment. Existing law and Department of Defense regulations give the President the ability to impose controls over any successive transfers of defense articles. The Senate language would require the imposition of controls over "nth" countries and even upon private parties who buy demilitarized articles for salvage and smelting purposes.

The language agreed upon by the committee of conference limits controls to those of "significant defense articles on the United States munitions list." It also removes the unintended inclusion in the Senate text of non-weapon items such as clothing, automobiles, and typewriters.

## REQUIRING APPROPRIATIONS TO BE CONSISTENT WITH AUTHORIZING LEGISLATION

(Section 12 of the Senate amendment)

The Senate amendment requires that any appropriation above the amount authorized by the Congress cannot be used and that any appropriations for which there is not an authorization cannot be extended.

The House bill contained no comparable provision.

The managers on the part of the House agreed that appropriations should not be made without prior authorization by the Congress.

## DEFINITIONS

(Section 13 of the Senate amendment)

This provision adopts from section 644 of the Foreign Assistance Act of 1961, as amended, the definitions of "defense articles" and "excess defense articles."

The House bill contained no comparable language.

The House agreed that the definitions as contained in section 644 of the Foreign Assistance Act should apply.

## REPEAL OF THE GULF OF TONKIN RESOLUTION

(Section 14 of the Senate amendment)

This Senate amendment would repeal Public Law 88-408, the Gulf of Tonkin Resolution.

The House bill contained no comparable provision.

The managers on the part of the House accepted the Senate language. Recent legislation and Executive statements make the 1964 resolution unnecessary for the prosecution of U.S. foreign policy.

## TRANSPORT OF CHEMICAL MUNITIONS FOR OKINAWA TO THE UNITED STATES

(Section 16 of the Senate amendment)

This Senate amendment, in addition to prohibiting the use of any funds authorized or appropriated under this act or any other law to transport chemical munitions from Okinawa to the United States, authorized the appropriation of such funds as are necessary for the detoxification or destruction of such chemical munitions only outside the United States.

The House bill contained no comparable provision.

The managers on the part of the House accepted compromise language which makes it clear that the term "United States" means the several States of the Union and the District of Columbia.

## AMENDMENT TO TITLE

The Senate amended the title of the House bill to reflect the action taken by the Senate.

The House receded.

THOMAS E. MORGAN,  
CLEMENT J. ZABLOCKI,  
WILLIAM S. MAILLIARD,  
*Managers on the Part of the House.*

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